

**UNITED STATES DISTRICT COURT
IN THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JOHN RICHARD O'CONNELL and
SUZANNE O'CONNELL,

Plaintiffs,

Civil Action No.

vs.

Honorable

HOWMEDICA OSTEONICS CORP,

Defendant.

David B. Carter, Jr. (P54862)
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NOTICE OF REMOVAL

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT,
WESTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

Defendant, HOWMEDICA OSTEONICS CORP. ("HOC"), by its counsel Dykema
Gossett PLLC, hereby removes to this Court, pursuant to 28 U.S.C. §§ 1441 *et seq.*, the claims
pending as Case No. 19-04-NP in the Circuit Court for the County of Ingham, State of Michigan.

In support of this removal, HOC states as follows:

1. This case was commenced by the filing of a Complaint on or about January 2,
2019, in the Circuit Court for the County of Ingham, State of Michigan. At the time of the
original filing, the case was entitled *John Richard O'Connell and Suzanne O'Connell v.*
Stryker Corporation. Stryker Corporation was the only named Defendant. The case was

assigned Case No. 19-04-NP. A copy of the Summons and Complaint served upon Stryker Corporation are attached as **Exhibit A**.

2. On or about January 22, 2019, Plaintiffs filed a First Amended Complaint (the “FAC”) in the Circuit Court for the County of Ingham, State of Michigan. The FAC is entitled *John Richard O’Connell and Suzanne O’Connell v. Howmedica Osteonics Corp.* The FAC does not name nor assert claims against Stryker Corporation. The only named defendant in the FAC is Howmedica Osteonics Corp.. That same day, on January 22, 2019, counsel for HOC was served with the FAC. A copy of the FAC is attached as **Exhibit B**. Exhibits A and B constitute all process, pleadings, and orders served upon HOC in this action.

3. The FAC is the first pleading or paper upon which the case became removable as it named a foreign corporation rather than a Michigan corporation as the Defendant. This Notice of Removal is filed within thirty (30) days after HOC received the FAC and is therefore timely filed pursuant to 28 U.S.C. § 1446(b)(3).

4. This Court has original diversity jurisdiction over this civil action pursuant to 28 U.S.C. § 1332, and this action may therefore be removed to this Court by HOC pursuant to 28 U.S.C. § 1441, because the amount in controversy is in excess of \$75,000 and the only defendant, HOC, is completely diverse from Plaintiffs.

5. Diversity jurisdiction exists because:

- a. Plaintiffs are citizens of the state of Michigan. (FAC at ¶¶ 1,4.)
- b. The only defendant, HOC, is, and was at the time the FAC was filed, a New Jersey corporation with its principal place of business in Mahwah, New Jersey. (FAC, ¶ 2.) HOC is not and was not a citizen of the State of Michigan.

c. Plaintiffs seek damages in the amount of at least “\$300,000, exclusive of interest and costs.” (FAC, ¶¶ 4, 37.)

6. Pursuant to Rule 3.2(a) of the Local Rules of the United States District Court for the Western District of Michigan, this Court is the district court for the district embracing Ingham County, State of Michigan, in which the state court action is currently pending, so venue is proper in this Court pursuant to 28 U.S.C. § 1441(a).

7. Promptly following the filing of this Notice of Removal, written notice of the removal of this action will be served upon Plaintiffs’ counsel and a copy of this notice will be filed with the Clerk of the Thirtieth Judicial Circuit Court, County of Ingham, State of Michigan, as required by 28 U.S.C. § 1446(d).

8. In filing this Notice of Removal, HOC does not waive any defenses that may be available to it.

WHEREFORE, Defendant HOC gives notice that the above-captioned action now proceeding against it in the Circuit Court for the County of Ingham, is removed therefrom to this Court.

Respectfully submitted,

DYKEMA GOSSETT PLLC

By: s/Jill M. Wheaton

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Dated: February 5, 2019

CERTIFICATE OF SERVICE

I certify that on the 5th day of February, 2019, I filed the foregoing through the Court's ECF System, and also served the foregoing via email and first class mail, postage prepaid, upon the following counsel of record at the following address:

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